

AMENDED IN ASSEMBLY JUNE 23, 2010  
AMENDED IN ASSEMBLY APRIL 21, 2010  
AMENDED IN ASSEMBLY MARCH 23, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

No. 2098

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**Introduced by Assembly Member Miller**

February 18, 2010

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An act to amend Section ~~6802 of the Public Contract~~ 130244 of the *Public Utilities Code*, relating to ~~public contracts~~ *transportation*, and declaring the urgency thereof, to take effect immediately.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2098, as amended, Miller. ~~Public contracts: design-build contracts.~~ *Riverside County Transportation Commission: transportation projects: contracts.*

Existing law sets forth requirements for the solicitation and evaluation of bids and the awarding of contracts by public entities for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement. Existing law, until January 1, 2014, also authorizes local transportation entities and the Department of Transportation, if authorized by the California Transportation Commission, to use a design-build process for contracting on certain transportation projects. Under these design-build provisions, the commission may authorize up to 5 local street or road, bridge, tunnel, or public transit projects of a local transportation entity, and up to 10 state highway, bridge, or tunnel projects of the Department of Transportation.

~~This bill would provide that a project of a local transportation entity may be approved by the commission under these provisions for the design-build method of procurement if the project is consistent with the Policy Guidance for Project Authorizations under the Design-Build Demonstration Program adopted by the commission as Resolution G-09-09 on September 9, 2009. The bill would state that this modification shall be applied retroactively beginning with the date that Chapter 2 of the Statutes of 2009, 2nd Extraordinary Session, became operative.~~

*Existing law authorizes the Riverside County Transportation Commission to impose tolls for 50 years on transportation facilities on its portion of State Highway Route 91, subject to extension beyond that time if reauthorized by the Legislature, and authorizes toll revenues to be used for capital and operating expenses of the facilities, including debt service, and for related transportation purposes in the Route 91 corridor. Existing law authorizes the commission to issue bonds for a transportation project, as defined, on State Highway Route 91 and requires reversion of the transportation facilities to the Department of Transportation after the bonds are repaid unless tolls have been reauthorized by the Legislature.*

*This bill would authorize the commission to procure services and award and enter into agreements, including agreements for design and construction for the transportation project utilizing the best value design-build method of procurement, as defined.*

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: ~~yes~~-no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1    ~~SECTION 1. Section 6802 of the Public Contract Code is~~
- 2    ~~amended to read:~~
- 3    ~~6802. (a) Subject to the limitations of this chapter, a local~~
- 4    ~~transportation entity, if authorized by the commission, may utilize~~
- 5    ~~the design-build method of procurement for up to five projects~~
- 6    ~~that may be for local street or road, bridge, tunnel, or public transit~~
- 7    ~~projects within the jurisdiction of the entity.~~
- 8    ~~(b) Subject to the limitations of this chapter, the department, if~~
- 9    ~~authorized by the commission, may utilize the design-build method~~

1 of procurement for up to 10 state highway, bridge, or tunnel  
2 projects.

3 (e) A project of a local transportation entity may be approved  
4 by the commission pursuant to subdivision (a) for the design-build  
5 method of procurement if the project is consistent with the Policy  
6 Guidance for Project Authorizations under the Design-Build  
7 Demonstration Program adopted by the commission as Resolution  
8 G-09-09 on September 9, 2009. This subdivision shall be applied  
9 retroactively beginning with the date that Chapter 2 of the Statutes  
10 of 2009, Second Extraordinary Session, became operative.

11 *SECTION 1. The Legislature finds and declares all of the*  
12 *following:*

13 (a) *Existing law authorizes the Riverside County Transportation*  
14 *Commission to construct a new highway and transit facility on*  
15 *State Highway Route 91 in Riverside County and to impose tolls*  
16 *for the use of that new facility as the means to finance the*  
17 *development, construction, and operation of capital improvements*  
18 *on that corridor.*

19 (b) *Estimated costs for planned capital improvements for State*  
20 *Highway Route 91 total over \$1.2 billion, resulting in over 18,000*  
21 *middle class jobs.*

22 (c) *The Riverside County Transportation Commission will bear*  
23 *all financial risk associated with the project and will be obligated*  
24 *to bondholders for the next 65 years, with no financial risk to the*  
25 *state.*

26 (d) *Best value design-build is the only procurement method to*  
27 *obtain cost and schedule certainty that will achieve investor*  
28 *confidence to enable the project to be constructed.*

29 (e) *A best value design-build contract will accelerate job*  
30 *creation, congestion relief, and economic productivity benefits*  
31 *associated with the improvements of the State Highway Route 91*  
32 *corridor by at least three years, all while preserving environmental*  
33 *protections and processes under the California Environmental*  
34 *Quality Act (CEQA) and the National Environmental Policy Act*  
35 *(NEPA).*

36 (f) *State Highway Route 91 improvements are part of the state*  
37 *and federally approved regional transportation plan for the*  
38 *Southern California Association of Governments region and are*  
39 *necessary for the southern California region to achieve air quality*  
40 *conformity pursuant to the Clean Air Act.*

1 (g) *The commission is a public agency governed by a board of*  
2 *31 locally elected officials and an ex officio member representing*  
3 *the Department of Transportation that is required to adhere to*  
4 *statutory competitive bidding requirements for all contracts.*

5 (h) *Existing law requires the establishment of an advisory*  
6 *committee for the State Highway Route 91 corridor comprised of*  
7 *representatives of the commission, the Orange County*  
8 *Transportation Authority, San Bernardino Associated*  
9 *Governments, and the Department of Transportation.*

10 (i) *Existing law requires the commission to conduct an annual*  
11 *audit of the toll facility on State Highway Route 91 and to*  
12 *undertake certain public participation measures.*

13 (j) *Therefore, it is the intent of the Legislature to provide the*  
14 *Riverside County Transportation Commission with direct statutory*  
15 *authority to implement the State Highway Route 91 capital*  
16 *improvement project using the best value design-build method of*  
17 *procurement.*

18 SEC. 2. *Section 130244 of the Public Utilities Code is amended*  
19 *to read:*

20 130244. (a) For the purposes of this section, the following  
21 ~~terms shall have the following meanings apply:~~

22 (1) “Authority” means the Orange County Transportation  
23 Authority.

24 (2) “Best value” means a value determined by objective criteria,  
25 including, but not limited to, price, features, functions, life-cycle  
26 costs, and other criteria deemed appropriate by the commission.

27 ~~(2)~~

28 (3) “Bonds” means bonds, notes, or other evidences of  
29 indebtedness authorized to be issued pursuant to paragraph (4) of  
30 subdivision (c).

31 ~~(3)~~

32 (4) “Commission” means the Riverside County Transportation  
33 Commission.

34 ~~(4)~~

35 (5) “Department” means the Department of Transportation.

36 (6) “Design-build” means a procurement process in which both  
37 the design and construction of a project are procured from a single  
38 entity.

39 ~~(5)~~

1 (7) “Franchise agreement” means the franchise agreement  
2 assigned to the authority pursuant to subdivision (c) of Section  
3 130240.

4 ~~(6)~~

5 (8) “Transportation facilities” means one or more of the  
6 following on State Highway Route 91 between the Orange and  
7 Riverside County line to the west and State Highway Route 15 to  
8 the east: (A) general purpose toll lanes; (B) lanes or facilities where  
9 the tolls may be levied and may vary according to levels of  
10 congestion anticipated or experienced or according to the  
11 occupancy of the vehicle; and (C) facilities or lanes utilizing  
12 combinations of or variations on (A) or (B), or other strategies the  
13 commission may determine appropriate on a facility-by-facility  
14 basis.

15 ~~(7)~~

16 (9) “Transportation project” means the planning, design,  
17 development, financing, construction, reconstruction, rehabilitation,  
18 improvement, acquisition, lease, operation, or maintenance, or any  
19 combination of these, with respect to tolled and nontolled facilities,  
20 structures, onramps, connector roads, bridges, and roadways that  
21 are on, necessary for, or related to the construction or operation  
22 of State Highway Route 91 between the Orange and Riverside  
23 County line to the west and State Highway Route 15 to the east.

24 (b) Pursuant to subdivision (l) of Section 130240, the authority  
25 may amend, assign, or terminate the Riverside County portion of  
26 the franchise agreement in the interest of advancing the  
27 transportation project described in paragraph~~(7)~~ (9) of subdivision  
28 (a). The department, upon request of the authority, shall approve  
29 an amendment to the franchise agreement to eliminate any portion  
30 of State Highway Route 91 within Riverside County from the  
31 franchise agreement.

32 (c) (1) The commission shall have the authority to set, levy,  
33 and collect tolls, user fees, or other similar charges payable for  
34 use of the transportation facilities, and any other incidental or  
35 related fees or charges, in amounts as required for the following  
36 expenditures relative to the transportation facilities as defined in  
37 paragraph~~(6)~~ (8) of subdivision (a) and for purposes of paragraph  
38 (2):

39 (A) Capital outlay, including the costs of design, construction,  
40 right-of-way acquisition, and utility adjustment.

1 (B) Operations and maintenance, including, but not limited to,  
2 toll collection and enforcement.

3 (C) Repair and rehabilitation.

4 (D) Indebtedness incurred, including related financing costs.

5 (E) Reserves.

6 (F) Administration, which shall not exceed 3 percent of toll  
7 revenues and associated facility revenues.

8 (2) Excess toll revenues beyond the expenditure needs of  
9 paragraph (1) may be expended for the following purposes:

10 (A) To enhance transit service designed to reduce traffic  
11 congestion on State Highway Route 91 or to expand travel options  
12 along the State Highway Route 91 corridor. Revenues expended  
13 under this subparagraph may be used to maintain the enhanced  
14 transit service. Eligible expenditures include, but are not limited  
15 to, transit operating assistance, the acquisition of transit vehicles,  
16 improvements to commuter rail traveling between Riverside and  
17 Orange Counties, and those transit capital improvements otherwise  
18 eligible to be funded under the State Transportation Improvement  
19 Program pursuant to Section 164 of the Streets and Highways  
20 Code.

21 (B) To make operational or capacity improvements designed  
22 to reduce congestion or improve the flow of traffic on State  
23 Highway Route 91. Eligible expenditures may include any phase  
24 of project delivery to make capital improvements to onramps,  
25 connector roads, roadways, bridges, or other structures that are  
26 related to the tolled and nontolled facilities on State Highway  
27 Route 91 between the Orange and Riverside County line to the  
28 west and State Highway Route 15 to the east.

29 (3) The commission, in consultation with the authority and the  
30 department, shall issue a plan of transportation improvements for  
31 the State Highway Route 91 corridor, which shall include projected  
32 costs, the use of toll revenues, and a proposed completion schedule.  
33 This plan shall be updated annually. The plan and each annual  
34 update shall be made available for public review and comment no  
35 less than 30 days prior to adoption by the commission.

36 (4) The commission is authorized to issue bonds to finance the  
37 costs of the transportation project, including the costs of issuing  
38 the bonds and paying credit enhancement and other fees related  
39 to the bonds, which bonds are payable from the tolls authorized  
40 pursuant to paragraph (1), sales tax revenues, development impact

1 fees, federal grant funds, or any other source of revenues available  
2 to the commission that may be used for these purposes. The bonds  
3 may be sold pursuant to the terms and conditions set forth in a  
4 resolution adopted by the governing board of the commission.  
5 Bonds shall be issued pursuant to a resolution adopted by a  
6 two-thirds vote of the commission. Any bond issued pursuant to  
7 this paragraph shall contain on its face a statement to the following  
8 effect:

9  
10 “Neither the full faith and credit nor the taxing power of the  
11 State of California is pledged to the payment of principal or  
12 interest of this bond.”  
13

14 (5) The department is authorized to enter into any lease,  
15 easement, permit, or other agreement with the commission  
16 necessary to accomplish the purposes of this section.

17 (6) The commission shall have the authority to impose tolls for  
18 use of the transportation facilities for 50 years following the  
19 opening of the transportation facilities for public use, after which  
20 time the commission shall have no further authority to impose or  
21 to collect a toll for use of transportation facilities on State Highway  
22 Route 91, unless reauthorized by the Legislature. The transportation  
23 facilities shall revert to the department after the bonds issued  
24 pursuant to this section are paid off in their entirety, unless tolls  
25 have been reauthorized by the Legislature. Upon reversion, the  
26 facilities shall be delivered to the department in a condition that  
27 meets the performance and maintenance standards established by  
28 the department.

29 (7) The commission shall make available for public review and  
30 comment the toll schedule and any subsequent proposed changes  
31 to the schedule no less than 30 days prior to the adoption by the  
32 commission of a toll schedule.

33 (d) ~~This~~ *The powers granted to the commission pursuant to this*  
34 *section shall be supplemental and in addition to any other authority*  
35 *of the commission to undertake the transportation project. The*  
36 *commission may procure services and award and enter into*  
37 *agreements, including agreements for design and construction for*  
38 *the transportation project utilizing the best value design-build*  
39 *method of procurement, notwithstanding any other requirement*  
40 *of state law or regulation or county ordinance or regulation*

1 *relating to public bidding or other procurement procedures or*  
 2 *otherwise applicable to public works, services, or utilities.*

3 (e) This section shall not prevent the department or any local  
 4 agency from constructing facilities within the State Highway Route  
 5 91 corridor that compete with the transportation project, and in no  
 6 event shall the commission be entitled to compensation for the  
 7 adverse effects on toll revenues due to those facilities.

8 (f) If any provision of this section or the application thereof is  
 9 held invalid, that invalidity shall not affect other provisions or  
 10 applications of this section that can be given effect without the  
 11 invalid provision or application, and to this extent the provisions  
 12 of this section are severable.

13 (g) This section shall not apply to State Highway Route 91  
 14 between the Orange and Riverside County line and State Highway  
 15 Route 15 unless the authority amends or partially assigns the  
 16 restated franchise agreement, as amended, between the department  
 17 and the authority to exclude that portion of State Highway Route  
 18 91 from the restated franchise agreement, as amended.

19 ~~SEC. 2.~~

20 *SEC. 3.* This act is an urgency statute necessary for the  
 21 immediate preservation of the public peace, health, or safety within  
 22 the meaning of Article IV of the Constitution and shall go into  
 23 immediate effect. The facts constituting the necessity are:

24 In order to provide improved motorist safety, reduced traffic  
 25 congestion, and increased traffic mobility on the state's highways  
 26 at the earliest possible time, and the associated economic benefits,  
 27 it is necessary for this act to take effect immediately.

28  
 29  
 30 **CORRECTIONS:**

31 **Title—Lines 1 and 2.**

32 **Text—Pages 3, 4, and 6.**  
 33